

**REGULAR MEETING OF THE
BREWSTER COUNTY COMMISSIONERS COURT
TUESDAY, MARCH 24, 2009
9:30 A.M.**

Judge Beard called this meeting to order. Officers present are listed as follows:

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| VAL CLARK BEARD | COUNTY JUDGE |
| ASA STONE | COMMISSIONER PCT. 1 |
| KATHY KILLINGSWORTH | COMMISSIONER PCT. 2 |
| RUBEN ORTEGA | COMMISSIONER PCT. 3 |
| MATILDE PALLANEZ | COMMISSIONER PCT. 4 |
| BETTY JO ROONEY | TAX COLLECTOR |
| CAROL OFENSTEIN | TREASURER |
| STEVE HOUSTON | COUNTY ATTORNEY |
| RONNY DODSON | SHERIFF |
| JERRY SOTELLO | J.P., PRECINCT 1 |
| BERTA RIOS MARTINEZ | COUNTY CLERK |

Judge Beard called this meeting to order.

1. Minutes / additions / corrections / approval

The minutes from the Feb. 24, 2009, and March 9, 2009, meetings were presented for approval.

Commissioner Ortega made a motion to approve the minutes, which were seconded by Commissioner Killingsworth, and passed unanimously.

2. Treasurer

A. General Bills / Discussion and appropriate action

Commissioner Ortega made a motion to accept the general bills, which was seconded by Commissioner Pallanez, and passed unanimously.

Treasurer Ofenstein presented two walk-in bills: Dinosaur Valley Construction for \$156,123.55 and Texas Disposal Systems for \$3,751. The DVC bill is for SWA design services for the County infrastructure projects.

Commissioner Stone made a motion to approve the walk-ins, which was seconded by Commissioner Pallanez, and passed unanimously.

B. 2008 Tax Collection Contracts / Discussion and appropriate action

Mrs. Ofenstein presented the following tax collection contracts: Alpine ISD, \$26,350; Marathon ISD, \$12,700; City of Alpine, \$12,700; Hospital District, \$12,700; and San Vicente ISD, \$1,600.

She said she does not have the Terlingua schools contract at this time.

Commissioner Killingsworth said Terlingua is still working out some details.

Commissioner Killingsworth made a motion to approve all other contracts, which was seconded by Commissioner Ortega, and passed unanimously.

C. 2009 VINE Contract / Discussion and appropriate action

Mrs. Ofenstein explained that this software is used at the jail, and the payment will be reimbursed.

Commissioner Ortega made a motion to accept the contract, which was seconded by Commissioner Stone, and passed unanimously.

D. Other matters related to Treasurer's Office / Discussion and appropriate action

3. Officials' Monthly Reports / Approval

No reports were presented for approval.

4. Road & Bridge Department / Community Facilities

A. Road & Bridge Superintendent's Report

General updates on maintenance and repairs for all county roads; road materials including fuel, supplies, including usage & inventories & future needs; equipment including heavy equipment (maintenance, repairs, future needs, replacement and additions), pickups, trailers and other light vehicles and accessories, and small equipment (usage, future needs), equipment rentals; facilities (yards in Alpine, Marathon and S. County) and community facilities (assistance with maintenance and other related issues); assistance to other governmental entities and emergency responders; personnel issues (vacancies, new hires, performance and safety)

No report was given.

B. TxDOT Border Colonia Access Paving Grant / S. County Project

1. General Update

Commissioner Killingsworth has received a list and a plat from the surveyor. He needs to meet with the County Attorney about easements and related matters.

2. Discussion and appropriate action for work of grant to go forward

C. N. Double Diamond / Request from Property Owners Association to take additional New County subdivision roads in County System / Discussion and appropriate action concerning preliminary action to begin process to take these additional roads into County system

Commissioner Pallanez said he really wants to do right by Double Diamond, and is in favor of taking additional Double Diamond Roads into the County system.

Amy Amick spoke representing the board of the Property Owners Association. She said the additional mileage that has not been taken in by the County is 6.8 miles. Since April 2006, when the Commissioners approved taking some of the roads into the system, 2.5 miles have been worked. The board is requesting that the rest of the mileage be taken in.

Judge Beard noted that taking in roads is a two-part process, with Commissioners first taking preliminary action to express interest in going forward, followed by securing easements and then final action to take the roads into the system.

Commissioner Pallanez made a motion to express preliminary interest in taking in the remaining road mileage in Double Diamond, which was seconded by Commissioner Stone, and passed unanimously.

D. Discussion and appropriate action for general work of Road & Bridge Department to go forward

5. Sheriff's Department / Request to purchase a 2006 Jeep Wrangler from Asset Forfeiture Account / Discussion and appropriate action

Sheriff Dodson requested the use of \$16,500 from the asset forfeiture account to purchase a Jeep.

Commissioner Ortega made a motion to approve the request, which was seconded by Commissioner Killingsworth, and passed unanimously.

6. Presentation by U.S. Census Bureau / Preparation for 2010 / Discussion and appropriate action to support 2010

Charlene McBride, a partnership specialist from the Midland office of the U.S. Census Bureau, said in 2010, the Census will have the shortest questionnaire in history. It should only take 10 to 15 minutes to fill out and send back.

The long form will be sent out by a private company and that information will be updated every 5 years, and later, every 3 years. The form is still mandatory, even though the information is being collected privately.

The 10-year Census is mandated by the Constitution, and is used for redistricting, funding and other things.

The information is never given to any other agency or business. It is stored for 72 years. The key is that everyone living in the U.S. is counted, not only U.S. Citizens.

Ms. McBride said they are in the process of canvassing. They have received all of the information on Brewster County, including all of the addresses. More than 600 individuals have been hired in Brewster County, and Ms. McBride said she believes Brewster County is well-represented. They will start training in April and will canvass until the first part of July. They will be given handheld GPS systems in order to make certain of correct addresses.

The forms are not sent to P.O. boxes, so they will be hand-delivered to many homes.

Judge Beard said that was the problem 10 years ago. How do you get a form to someone who lives five miles behind a locked gate?

Ms. McBride said they are working on a media campaign to make sure they are counted.

Commissioners Killingsworth and Ortega both said hand-delivery in this County is not going to work.

Judge Beard implored Ms. McBride to urge the Census to think outside the box.

It was noted that during the 2000 Census, people who do not live in Brewster County were not used to do the count.

Judge Beard did thank Ms. McBride for the willingness to work with Brewster County.

The GPS may not be helpful because there are streets in South County that have not been named.

Commissioner Killingsworth and Ms. McBride planned a meeting.

The Midland area manager, Charlie Spence, assured Commissioners that he is committed to a 100 percent count in Brewster County.

He said he wants to partner with the County to figure out how to get everybody counted.

7. Emergency Management Department

EMC Tom Santry is at the state training, so Judge Beard said Item B will be addressed at a future meeting.

A. Acknowledge recent donations to the Alpine Volunteer Fire Department

Judge Beard said Ann McDaniel, who lives in the vicinity of the Loma del Norte fires which burned earlier this month, has made a generous donation to the Alpine VFD.

Commissioner Ortega made a motion to send her a letter of thanks, which was seconded by Commissioner Stone, and passed unanimously.

B. Rejection by President of Texas Governor's Request to declare 199 Texas Counties as Wildfire Disaster Areas

- 1. Negative Impact of decision on this County & other local responders***
- 2. Discussion and appropriate action***

8. Pending Community / Public Safety Infrastructure Projects / Discussion and appropriate action to go forward with all projects, including:

Major Projects:

South County Emergency Response Center (Housing for Terlingua Medics, Terlingua VFD, Deputy, J.P. & related support space

Alpine/N. Brewster County Area Emergency Response Center (Fire Station for Alpine VFD & Brewster County Emergency Operations Center)

Marathon Law Enforcement Facility (Housing for Deputy, J.P. Pct. 3 & training room)

Brewster County Jail Renovation (focus on update of electronics)

Construction Assistance for Alpine Public Library, a non-profit corporation

Smaller projects:

Vehicle & Equipment Storage Building (shed design) for South Brewster County on 23221 FM 170, near Terlingua & Study Butte

Repairs & Modifications to Old County Library Building, 203 N. 7th Street, Alpine

Outdoor Meeting Space for Marathon Town Square, adjacent to Community Center

A. General matters related to all projects

- 1. Bidding / RFP process for materials & subcontracts / Discussion and appropriate action***

Judge Beard said that she and Construction Manager Danny Butler have met at length with attorney Greg Hudson to discuss the best method for soliciting bids. (Commissioners have authorized Judge Beard to go forward with the bid/proposal process.)

The process which has been recommended is a request for sealed proposals.

Mr. Butler said proposals give more latitude. Once they are in, negotiations can be made, unlike with bids, which are pretty much set.

Proposals are still opened during a meeting and receipt is acknowledged.

Commissioner Killingsworth made a motion to approve utilizing a request for sealed proposals for the three major infrastructure projects as this method is in the best interest of the County. Commissioner Stone seconded the motion, which passed unanimously.

Judge Beard outlined the schedule for the advertising process. Proposals are due by 2 p.m. April 13.

A called meeting will be held April 16 to consider awarding proposals.

Mr. Butler said everything may not be awarded at that meeting, but rather enough to get started. Another meeting could then be held to award the rest of the proposals.

Judge Beard said part of the library project, electrical and plumbing, are running with the County's advertising.

There is also a request for proposals to supply miscellaneous construction supplies.

Judge Beard said she believes this system gives local people a shot at working on the projects.

The notices have been drafted and are ready to run in the newspaper beginning March 26.

2. Temporary Employees / Matters related to retaining temporary employees

B. Matters related to specific projects

1. Fire Station for Alpine VFD & EOC / General update re plans, Scheduling & permitting

Mr. Butler discussed some of the things going on at the site; he said they are still working on getting gas lines moved.

2. Marathon Justice Center (Deputy & J.P. Offices)

Update re site preparation & discussion concerning upcoming work

3. S. County Emergency Response Center

- a. Update on Site preparation, including installation of Septic System, water tap & temporary facilities for workers / Discussion and appropriate action regarding installation of OSS system & providing on site temporary accommodations for workers, pad & road preparation**
- b. County Roads in & adjacent to new site & proposed new county roads in & adjacent to site**

Update on relocating roads and/or taking additional roads into County system to provide improved access for ERC & neighboring property (Allen Lane on west side & unnamed road on east side of property) / Discussion and appropriate action to go forward with taking these roads in County System

- c. RGEC Electrical Power Lines & Helipad / Update / Discussion and appropriate action concerning moving lines**

Mr. Butler has learned that some lines on the west side of the property can be moved to make way for the helipad.

- d. Matters related to site engineering and surveys / Update**

4. Jail Renovations / Update

Mr. Butler is going to do an engineering review at the jail April 13.

5. Construction Assistance for Alpine Public Library / Update

9. Pending Grant Matters

A. Colonia Construction Fund Application / (2nd Septic Tank Replacement Grant Application for S. Brewster County)

1. Update

Commissioner Killingsworth said the application is ready and will be shipped tomorrow. She said there is a lot of interest.

- 2. Other general administrative matters related to application for grant / Discussion and appropriate action to go forward with grant application**

and program

B. 2007 ORCA Infrastructure Grant / Discussion and appropriate action / Study Butte Water Corp. Improvements

- 1. Update & General Administrative Matters regarding grant**
- 2. Study Butte Water Corporation Tank Project**

a. Update

b. Report concerning tank site issues / Discussion and appropriate action concerning site & site swap

Commissioner Killingsworth said she brought the deeds for the land swap in and they are being filed "as we speak." She said the project can now proceed. ORCA has approved the land swap.

c. Discussion and appropriate action for project go forward

C. General review of necessity to timely complete all County grant projects / Discussion and appropriate action

Judge Beard said she thinks it is a good time to review the necessity to complete projects in a timely manner.

When there is Federal or State funding, it is the goal of Congress or the State to get the money out, and get the project done as quickly as possible.

With ORCA projects in particular, if an entity has not closed out a project, the entity may not be eligible for funding in the next round, and the citizens lose out.

Commissioner Killingsworth suggested that those agencies involved come to Commissioners Court so that the procedures can be outlined and everybody is clear about the goals. Judge Beard said that this is a good idea.

10. Proposed legislation now pending in the Texas Legislature / Discussion and appropriate action to endorse, oppose or comment concerning:

A. H.B. 78 by Flynn relating to the amount of a County expenditure for which competitive bidding is required

Judge Beard said this bill increases the amount which is exempt from competitive bidding. It has been several years since that amount was raised. It is now \$25,000. Now, even a single pickup is frequently above this amount.

Rep. Flynn has introduced legislation which would take the exemption to \$50,000, which Judge Beard believes would be a benefit.

Commissioner Ortega made a motion to endorse the bill, which was seconded by

Commissioner Stone, and passed unanimously.

B. S.J.R. 47 by Lucio proposing a constitutional amendment authorizing a County to regulate land development if approved by a majority vote in a county-wide election

Judge Beard said this bill is problematic for Brewster County. On one hand, it gives authority to regulate land development by referendum. On the other, it turns Commissioners Court into an "800 lb. guerilla." It makes Commissioners Courts excessively powerful. Brewster County does not have the resources to carry out regulations of this type.

Judge Beard said it would fundamentally change the nature of what Commissioners Court does.

Commissioner Stone made a motion to oppose the bill, which was seconded by Commissioner Killingsworth, and passed unanimously.

11. Public Comment

Clarence Russeau said he wants to ask that the Commissioners include two items on a future agenda. The first concerns a group of young children who have put together a presentation for a skate park in Alpine. He believes the Commissioners are in a position to help and teach the kids about how to go about making change in their community.

The second thing he would like Commissioners to consider is grading the ballparks in South County.

Judge Beard told Mr. Russeau that he can speak directly with Commissioners Killingsworth and Ortega, who are in charge of the care of facilities in South County.

12. County Clerk / Elections Agreement for City of Alpine to utilize County Voting Equipment for City Council Meeting / Discussion and appropriate action

Berta Martinez said she got an agreement from City Secretary Molly Walker, which she reviewed with County Attorney Steve Houston.

The cost for renting the ballot boxes is \$5 each.

Commissioner Killingsworth made a motion to approve the election agreement between the County and the City, which was seconded by Commissioner Stone, and passed unanimously.

13. Pending Litigation re Mills Road / Cause No. 2007-03-B8551-CV, Michael J. McCulloch, Kathleen M. McCulloch and Alice McCollum, Individually and d//b/a Osoba Ranch Company vs. Brewster County, Texas / Confer with County Attorney

A. Executive Session – Pursuant to Section 551.071, Government Code, VTCA,

Pending Litigation and Consultation on a matter in which the duty of the attorney to the government body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this Chapter (Privileged Matters), and Pursuant to Section 551.072, Government Code, VTCA, Deliberation regarding real property

At, 10:30 a.m., Judge Beard announced that Commissioners Court was going into Executive Session to confer with the County Attorney.

Reconvene in Open Session

B. Discussion and appropriate action resulting from Executive Session

At 10:47 a.m., the Commissioners Court reconvened in open session. Judge Beard announced that the Court had been in Executive Session conferring with the County Attorney about privileged matters. Judge Beard asked if any action was to be taken as a result of the Executive Session.

No action was taken.

SUPPLEMENTAL AGENDA

1. 2010-2011 Redistricting Issues / Discussion and appropriate action

Judge Beard said the odds are that Brewster County will need to be redistricted following the 2010 Census. Attorney Greg Hudson did an excellent job guiding Brewster County through the 2000 redistricting process. The 1990 redistricting process had not been done well at all.

She said she is unsure if Mr. Hudson is still in that business, but she would like to go ahead and start planning.

Commissioner Ortega made a motion to adjourn, which was seconded by Commissioner Stone, and passed unanimously.

VAL CLARK BEARD, COUNTY JUDGE

ATTEST:

BERTA RIOS MARTINEZ, COUNTY CLERK